

Consultation on Second HS1 Regulatory Statement and Holding HS1 Ltd to Account for Stations in CP3

[Consultation on potential regulation of HS1 stations | Office of Rail and Road \(orr.gov.uk\)](https://www.orr.gov.uk/consultation-on-potential-regulation-of-hs1-stations)

1. Department for Transport
2. Eurostar International Limited
3. HS1 Ltd
4. Network Rail (High Speed)
5. South East Trains



Department  
for Transport

Department for Transport

Web Site: [www.dft.gov.uk](http://www.dft.gov.uk)

22 April 2022

Dear Debbie Daniels,

**Department for Transport response to the ORR consultation on the regulatory statement and holding to account policy documents.**

Subject to the conclusions of our current consultation exercise, the Department for Transport is keen to proceed with the transfer of responsibility for the regulation of HS1 stations to the ORR. We recognise the ORR's broad expertise in conducting Periodic Reviews and monitoring asset management across rail and road, and we believe that this expertise would result in a higher degree of assurance regarding asset management and efficiency. This assurance would help protect the long-term value of these assets.

We are grateful for the ORR's progress to date in preparing for the transfer and we welcome the opportunity to provide comments on the 'Second Regulatory Statement' and the 'Holding HS1 Ltd to account in CP3' documents. We have provided separate comments for each document below.

**Second Regulatory Statement in respect of the HS1 Network**

We strongly support the ORR on their approach to carrying out their duties as set out in this document. We are in agreement with the expectations set out for HS1 for the "Life Cycle Report (LCR)," particularly that a LCR is required for each station and DfT would and would like to be kept informed by the ORR on any reductions in the long-term charge for future control periods which are identified.

**Holding HS1 Ltd to account in CP3 – Interim policy for stations funding**

We support the ORR's holding HS1 Ltd to account document, although we note that the description of its enforcement rights depends on reaching an agreement with HS1. We think this is a useful statement of how the ORR will enforce and we hope it will provide HS1 with comfort that enforcement is a remote possibility. We also agree and support the approach set out on page 2 of this document and we believe the approach is sensible in regard to it being risk-based, targeted, proportionate, transparent and predictable.

Yours Sincerely,

Joseph Mullally  
Senior Contract Manager  
Department for Transport



Debbie Daniels  
Office of Rail and Road  
25 Cabot Square  
London  
E14 4QZ

By email: [PR19@orr.gov.uk](mailto:PR19@orr.gov.uk)

22 April 2022

Dear Debbie,

Eurostar International Limited's ("EIL") response to the Office of Rail and Road's ("ORR") Consultation on potential regulation of HS1 stations

Thank you for providing EIL with the opportunity to comment on **the ORR's second regulatory statement and "holding to account" policy for CP3 setting out the ORR's responsibilities and processes in the context of the proposed transfer of regulation of HS1 stations to the ORR.**

*We support the principle as it has the potential to unlock synergies and efficiencies in the regulatory process*

**We are generally strongly in support of the DfT's proposed transfer:** the ORR holds the necessary expertise in carrying out such functions, and there is scope for synergies and efficiency savings from the ORR conducting its **periodic review of HS1's track access charges together with** a concurrent periodic **review of HS1's station access charges.** Provided the transfer of the regulatory functions is handled in an effective manner (see our comments below) we expect that this will have a positive impact on the industry, providing a simpler, more efficient and consistent approach to the five **yearly reviews of HS1's track and station access charges.**

*Crucial details how the transfer will be effected remain outstanding*

A key element of the transfer will be how the transfer is effected. **In this context we welcome the ORR's early publication of its draft regulatory statement and interim monitoring policy for stations funding in CP3 and the opportunity to comment on these in this response letter.**

However, beyond **the ORR's high level policies** set out in these two documents we have not yet had sight of the proposed mechanisms to achieve this. It is important that we are given early sight of these and are provided with the opportunity to comment on the proposals. Prior to this, we necessarily reserve our final view on the operation of the proposal, in particular how the transfer of the regulatory functions will be reflected in the relevant contractual documents, including the HS1 Leases, the HS1 Concession Agreement **and the Train Operators' (TOC) Station Access Agreements.** We look forward to receiving this detail of the proposed transfer so that we may understand how it will be effected.

**Below we set out our comments on the ORR's documents in turn.**

Eurostar International Ltd  
6<sup>th</sup> Floor Kings Place  
90 York Way  
London N1 9AG

T +44 (0) 7714 953 890

[eurostar.com](http://eurostar.com)

## **Comments on the Second Regulatory Statement in respect of the HS1 network (the "Statement")**

### *The mechanisms of the new regime*

Given the early stage in this process, we accept that the level of detail contained in this Statement is necessarily high. We expect that in due course the ORR, together with the DfT, will carry out a full due diligence process to identify all necessary changes in the relevant regulations and contracts to ensure that the ORR has all necessary powers and resources to carry out this new function, as well as to ensure that industry and passenger rights are protected and the balance of costs and risks for stakeholders remains unchanged. As key stakeholders in this process we would welcome open communication and opportunities to input into this important process. This includes, but is not limited to, the following issues:

- The consultation procedures forming part of a periodic review
- The rights to appeal ORR decisions
- **The ORR's information gathering, monitoring and enforcement policies.**

### *The scope of the periodic review*

In paragraph 2 the Statement reads

***"A key function established by these documents is the undertaking of a periodic review of funding for HS1 stations, including setting of the long-term charge for operators."***

Please can the ORR specify what other functions are included in the periodic review of funding for HS1 stations?

### ***Long Term Charges (LTC) need not pay ahead for the full 40 year "look ahead" period***

Paragraph 3 outlines the requirement ***"for adequate funding to ensure good and substantial repair and condition of the asset until 1 April 2061"***. We note that there are many parallels between the regulation of the renewals **part of the track access charges and of the train station's Long Term Charges**, with some of the same principles applying to both. In particular, the lease and concession agreements require a **40 year "look ahead"**. We emphasise that this does not equate to an obligation to fund fully all future potentially required works 40 years in advance. In this context, it is key that it is made clear that the ORR is not required to impose any narrower interpretation on this look ahead requirement that **would operate in practice to turn this into a 40 year "pay ahead" principle for regulation.**

### *The Statement should include provisions for stakeholder consultation and involvement*

The Statement should include provisions for early and timely involvement and consultation of industry **stakeholders in the periodic review process, including HS1's main rail customers. As one of HS1's main customers we can contribute much insight and evidence relevant to inform HS1's periodic reviews and have a direct interest in the effective regulation of the stations for the benefit of our passengers.**

### *The Statement's key references and definitions*

While the terminology used in the Statement and the key contractual and regulatory documents will be known to and understood by current key stakeholders, to provide clarity the statement should include full references and **links to all relevant underlying documents and provide definitions of key terminology (e.g. "Life Cycle Report", "Life Cycle Works Saving").**

## **Comments on ORR's interim holding to account policy in CP3 for stations funding ("CP3 policy")**

### *Continued active scrutiny of HS1's CP3 commitments provides important regulatory continuity*

We welcome the ORR's commitment to continue regular and close scrutiny of HS1's commitments made to the DfT as part of the PR19 process. This is important to ensure regulatory continuity and certainty for industry stakeholders and delivery of value for money by HS1 through its delivery of long term renewals projects for its railway stations.

### *HS1's customers should be closely involved by the ORR*

We also welcome the ORR's commitment to engage stakeholders in its monitoring activities. Operators have the best external insight and expertise to identify key areas of interest to ensure that HS1 delivers for passengers. The ORR should therefore proactively seek operator inputs and include them throughout their monitoring process through open and transparent communication.

### *A successful risk-based approach requires establishing a reliable evidence base*

We support an approach that is risk-based and aims to focus on areas of highest impact on passengers. The success of such an approach is reliant on the ORR collecting all relevant evidence and inputs allowing it to make an informed assessment. We expect that the ORR will not solely rely on information provided voluntarily by HS1 and stakeholder engagement conducted by HS1 but also collect its own information and directly and proactively involve stakeholders, such as HS1 contractors where relevant and train operators, in its information gathering process.

### *We would like to learn more about the ORR's planned financial and investment assessments*

We support fully the ORR's stated intention to assess HS1's financial and long term investment performance against investment and efficiency targets under HS1's long term renewals strategy and the PR19 settlement. We welcome the opportunity to remain closely involved in this process and receive more information about the way in which the ORR intends to carry out this important oversight role.

### *The CP3 assessment of potential savings must consider the effects of the pandemic*

For CP3 it is particularly important that the significant reduction in traffic caused by the pandemic and its impact on the renewals profile are fully accounted for. Any underspend against plan may not be a result of efficiency savings of which HS1 could be entitled to retain 30% but reflect a delay in renewals caused by lower wear and tear of the assets.

### *NR(HS) must be part of ORR's monitoring scope*

Furthermore, the contract between HS1 and NR(HS) is critical for a full and fair assessment of HS1's performance since NR(HS) plans, manages and operates the stations and the renewals schedule on behalf of HS1. We welcome further detail from ORR how it intends to include NR(HS) in its monitoring and enforcement activities.

### *The ORR requires access to Qualifying Expenditure and dual till information for effective regulation of LTC*

Even though Qualifying Expenditure and non-regulated ("dual till") activities fall outside of the regulatory remit, it is nevertheless important that, in order effectively to carry out its obligations to review the Long Term Charges, the ORR needs to be aware of these costs and arrangements in order, for example, to assure itself that the possibility of double counting has been excluded.

### *We would welcome more detail on ORR's escalation and enforcement policy*

The escalation process as currently drafted leaves open what, if any, penalties or sanctions the ORR could establish in case of persistent non-compliance by HS1 with ORR requirements. We would welcome more information on the scope of the ORR's powers and enforcement policy in this respect.

*Third parties need a complaints process*

Furthermore, the escalation process should also provide a complaints process for third parties with respect to matters falling within the scope of station regulation.

*This is a time critical process that requires tight management and clear stakeholder communication*

Since the next periodic review is due to commence later this year, it is important that all necessary preparations can be completed in short order to enable the ORR to carry out a robust review. We therefore support the DfT and the ORR to complete this process now, and we look forward to receiving further detail of the proposed mechanism for transfer, in particular those elements that are relevant to our operation, so that we may review and comment on these further steps.

We are looking forward to engaging further with the DfT, ORR, HS1 and other stakeholders in this important process. Please contact me if you have any questions on the contents of this letter.

Many thanks and best wishes

Samantha Spence  
Director of Regulation

[sent electronically]

cc Gareth Williams, EIL  
Jason Lewis, EIL  
Isabell Kohten, EIL  
Joseph Jackson, DfT  
Joseph Mullally, DfT



**HS1 Limited**  
5<sup>th</sup> Floor  
Kings Place  
90 York Way  
London  
N1 9AG

Telephone: 020 7014 2700

22 April 2022

Debbie Daniels  
Delivery Manager  
Office of Rail and Road (ORR)

Cc: Joseph Jackson Department for Transport (DfT)

***Sent by email to PR19@orr.gov.uk***

Dear Debbie,

**Re: ORR's consultation on potential regulation of HS1 Stations**

1. Thank you for the opportunity to respond to this consultation on the ORR's draft regulatory documents that would apply to HS1 stations.
2. HS1 Ltd has held the Concession for HS1 route and stations since 2010. HS1's success is closely linked to that of our train operating customers. Central to this is continuing to provide outstanding stations to start or finish passenger journeys with safe and efficient passage and world-class amenity at an efficient cost. The regulatory oversight of stations, including the 5-yearly periodic review process and ongoing monitoring, is a key part in delivering this. HS1 Ltd welcomes the transfer of HS1 stations regulation from the DfT to the ORR. We recognise the additional benefits for all parties in the HS1 system of the ORR's expertise and experience and bringing regulatory oversight of HS1 route and stations under the same organisation. However, we can only support such a transfer where it is based on the key principles outlined in the DfT's Consultation on the Transfer of Regulation of HS1 Stations to the ORR.
3. The DfT has made clear in its consultation its commitment that there is no additional risk or regulatory burden imposed on HS1 and that HS1 bears no cost as a result of the change. We understand they have done this because the HS1 Concession is also based on several key financial principles that need to be protected as part of the transfer process to the ORR and are necessary if HS1, its shareholders and lenders are to agree to Concession amendments.
4. These are important principles because they honour the basis on which the HS1 Concession was sold to the private sector. The draft regulatory documents are therefore critical to HS1 as they need to reflect the commitments and principles made by the DfT and ensure the transfer can take place.
5. At this time, the ORR's Secondary Statement draft document does not provide HS1 with the assurance that the key principles set by the DfT will be met. We have

provided detailed comments on the Secondary Statement in the table in Annex 1 below, but we highlight the main issues in this cover letter.

6. Our key concern is that the Secondary Statement does not include a statement acknowledging HS1's Dual Till arrangement which was included in 2009 Regulatory Statement for HS1 route.<sup>1</sup>
7. As the ORR would be aware the sale of HS1 by DfT was based on clearly protected revenue streams that allowed the private sector to appropriately price and bid for the asset. This included a retail revenue stream associated with stations. Bidders for the asset were able to take into account the certainty of future retail revenue streams. These revenue streams cannot be put at risk if HS1 is to agree to changes to the Concession because it fundamentally changes the financial basis of our business.
8. It is therefore unlikely HS1, its shareholders and lenders would accept the necessary changes to the HS1 Concession unless ORR makes clear that it will continue to honour the Dual Till basis for stations, in the same way the ORR made those commitments for the route. This demonstrates the commitment from DfT that the transfer of stations introduces no new risks to HS1.
9. The Secondary Statement is also much less comprehensive than the 2009 Statement for route. There are several other elements or statements about the regulatory framework that were included in the 2009 Statement for route that are not currently included in the Secondary Statement for the regulation of HS1 stations. These include, among other things, explicit recognition that stations qualifying expenditure (Qx)<sup>2</sup> and approval of station access agreements are out of scope of the regulatory framework for stations. These elements need to be set out in the Secondary Statement to provide confidence to HS1 Ltd that ORR will adopt the approach to regulation that it sets out in the Secondary Statement and that would give rise to a legitimate expectation that HS1 Ltd or future concession holders could rely upon to challenge the ORR if it deviated from this approach. This would give clarity to all parties in the HS1 system. HS1 Ltd will rely on these statements when deciding whether to agree to the transfer of regulatory oversight.
10. We have also raised comments where certain information should be included or amended in the Secondary Statement for accuracy, clarity and consistency. For instance, if the DfT decides that the TOCs should fund the ORR's regulatory costs, an outline of how these charges are managed also needs to be included in this Secondary Statement. As noted in our response to the DfT's consultation, we consider this is best managed through Stations Qx. Furthermore, HS1 would need to agree with DfT and ORR how this is reflected in the Station contracts.
11. The 'Holding HS1 to Account in CP3' for stations more closely aligns with the 2001 Letter on Holding HS1 to Account in CP3 for Route.<sup>3</sup> We welcome the ORR's approach to use regulatory best practice principles and its expectations for monitoring and assessment. It is vital that ORR take a proportionate approach – that any actions

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<sup>1</sup> See paragraph 19 of the 2009 Statement: <https://www.orr.gov.uk/sites/default/files/om/hs1-regulation-orr-statement-301009.pdf>

<sup>2</sup> Qx is the charge in relation to HS1 Ltd's operating and maintenance expenditure at stations which is separate to the Long Term Charge.

<sup>3</sup> <https://www.orr.gov.uk/sites/default/files/2021-05/letter-on-holding-hs1-to-account-in-cp3-2021-04-08.pdf>



taken will reflect the scale and nature of the problems and the likely costs and benefits to different parties of taking action – to recognise the differences in regulatory framework for HS1 stations and the high-speed route. Without this, there is a risk that the transfer could lead to higher regulatory costs that will be ultimately borne by TOCs and their passengers.

12. We have concerns however about the references to efficiencies and financial reporting on outperformance and efficiencies. While we recognise these are similar statements to those used in the 2001 Letter for Route, these statements are high-level and not well defined in how they apply to stations and therefore open to wide interpretation. We have had some discussions with the ORR about how we intend to report on efficiencies for stations. We understand that the ORR expects our reporting on these elements to follow the same approach that we take on our reporting for route efficiencies. If the ORR is expecting alternative approaches or additional information, then the ORR needs to set this out clearly in this Holding to Account document after further engagement with HS1. We expect the ORR to clarify its position to us before finalising this document.
13. We have also highlighted some amendments that are needed to the Holding to Account draft document for consistency and accuracy with the Stations Lease. We have set out our detailed comments on these points in Annex 1.
14. As you are aware, HS1 has been engaging with DfT and ORR in order to support the transfer ahead of the commencement of Periodic Review 24 (PR24). We will continue to do this, however, we will not be able to agree to the transfer unless these issues with the Secondary Statement are sufficiently addressed.
15. We would welcome a discussion with the ORR on our responses to help ensure the transfer can be agreed and progress in line with the ORR's timeframe.

Yours sincerely



**Mark Farrer**  
Chief Financial Officer

**ANNEX 1 – HS1 comments on ORR’s draft documents**

#	Topic	Comment
<b>Comments on Secondary Statement document</b>		
1	Purpose	The purpose needs to include language equivalent to paragraphs 2 and 3 of the 2009 Regulatory Statement for HS1 route. These paragraphs in the 2009 Statement were key to providing HS1 and prospective purchasers of HS1 with confidence that the ORR would adopt the approach to regulation set out elsewhere in the Regulatory Statement. They were aimed at giving rise to a legitimate expectation that might be used to challenge the ORR if it deviated from the approach set out in the Regulatory Statement in the absence of an overriding public interest (subject to limitations arising from the public law principle that the ORR must not unlawfully fetter its discretion). It is for that reason that the ORR clearly states in paragraph 2 that the Regulatory Statement may be relied upon by prospective purposes of HS1, and any new future owner and its equity and debt providers. HS1 needs similar wording included here as we will rely on this Secondary Statement to ensure the current risk profile at the point of sale remains so HS1 can agree to the transfer of regulation of stations from DfT to ORR.
2	Purpose	This section needs to be expanded to something akin to an ‘introduction’ section that sets out the context for the Statement being given, similar to paragraphs 5-8 of the 2009 Statement. The Secondary Statement also needs to clarify that it is supplemental to the 2009 Statement and that it relates to the ORR’s proposed functions in respect of the HS1 stations.
3	Purpose	This section also needs to recognise ORR’s functions under the Concession Agreement that relate to Stations for accuracy.
4	Purpose	The term ‘Duties’ should be changed to ‘Functions’. The Regulatory Statement should govern the whole of the ORR’s new role in relation to stations, whether that role is pursuant to an obligation (ie a duty) or pursuant to a discretionary power. The term function captures both and is typically used for this purpose in legislation and was used in the 2009 Regulatory Statement and so use of the term ‘Functions’ here would also be consistent.
5	Long-term Charge	The statement should include language similar to that used in paragraphs 14-21 in the 2009 Statement. Specifically, it should state that LTC is within scope and the basis for LTC is set out in the Lease. It should state that Qx is out of scope. There should be a paragraph that sets out the dual till approach that has been followed previously. It should acknowledge, in line with the PR19 Final Determination, that sources of revenue other than LTC paid by station users is out of scope of ORR’s functions i.e. not taken into account as part of any periodic or interim review. It is necessary to recognise the dual till arrangement to give assurance to HS1 Ltd that its risk profile will not change with the transfer, a key principle for HS1 Ltd to agree to the transfer taking place. Without the inclusion of this wording, HS1 Ltd will not be able to agree to the transfer of stations regulation.

#	Topic	Comment
6	Long-term charge	If DfT determines that the TOCs should fund the ORR's regulatory costs, an outline of how these charges are managed also needs to be included in this Secondary Statement.
7	Long-term charge	<p>Wording highlighting the role of NR(HS) and Mitie at the HS1 stations, equivalent to paragraph 13 of the 2009 Statement, needs to be included.</p> <p>There also needs to be wording equivalent to paragraph 32 of the 2009 Statement to reflect the long-term contracts HS1 has in place with NRHS for three of the stations. This is important as these long-term contracts affect HS1's ability to drive certain efficiencies and should be acknowledged by ORR as it did for the route.</p>
8	Long-term charge	<p>We would welcome more clarity on the ORR's expectations in Paragraph 5. Underspend on projects could be driven by a number of reasons, not just deferred life cycle work savings, which the drafting implies. The sentence should be amended to replace 'against' with 'and' which also aligns better with the Lease.</p> <p>We also remind the ORR that paragraph 7 of Schedule 10 of the Lease states that payments to funders must be proposed by HS1 and approved by the ORR to be distributed.</p>
9	Periodic Review	We welcome the ORR's recognition of the asset handback condition as set out in the Lease. It is vital this is honoured in order for the transfer of oversight to meet the agreed principles of no change in HS1's risk profile.
10	Periodic Review	Wording needs to be included addressing the principle that the ORR cannot challenge or reopen decisions of Government's Representative decisions in respect of previous Periodic Reviews to give HS1 additional comfort from a public law perspective. We expect to see language used that is equivalent to that which is ultimately agreed to be included in the Lease (ie paragraph 5.14 currently being discussed in tripartite meetings).
11	Periodic Review	This needs to include acknowledgement that HS1 has a right to seek interim reviews under the terms of the HS1 station leases, similar to the 2009 Statement.
12	Inferior Leases	There needs to be an equivalent to paragraph 34 of the 2009 Statement acknowledging the interaction between the charges determined by the ORR through the periodic review process and the station access conditions and station access agreements to make this clear to all parties. That is, that the charges determined by the ORR will need to flow down into the station access agreements via the station access conditions.
13	Inferior Leases	There needs to be an acknowledgement that the ORR's regulatory functions do not extend to having an approval right over station access agreements (or any changes to them).
14	Other	<p>There needs to be wording broadly equivalent to the asset stewardship paragraphs in the 2009 Statement. Specifically:</p> <ul style="list-style-type: none"> <li>• A paragraph equivalent to paragraph 36 setting out the asset stewardship requirements on HS1 in terms of the Life Cycle Purpose under the HS1 station leases and noting the differences with the approach for the route in the Concession Agreement.</li> </ul>

#	Topic	Comment
		<ul style="list-style-type: none"> <li>• The equivalent of paragraph 38 in terms of the ORR taking a proportionate and timely approach to monitoring and enforcement.</li> <li>• A paragraph similar to paragraph 39 that recognises the station concession agreements with NR(HS) and the station management agreement with Mitie for Ashford International.</li> </ul>
15	Other	There needs to be a statement acknowledging that HS1 receives no public subsidy and has a different business model to Network Rail, equivalent to paragraph 10 of the 2009 Statement.
16	Other	There is no paragraph numbering on some paragraphs – the formatting needs amending to be consistent.
<b>Comments on Holding HS1 to Account document</b>		
17	Overarching	Wording needs to be included addressing the principle that the ORR cannot challenge or unpick the DfT/Government's Representative's decisions in respect of previous Periodic Reviews. We expect to see language used that is equivalent to that which is agreed to be included in the Lease (ie paragraph 5.14 currently being discussed in tripartite meetings).
18	Aim and Objective	HS1 welcomes the aim to drive innovation and R&D. It has been a key focus for HS1 on how innovation at stations can improve outcomes for customers and passenger experience as well as meet the Life Cycle Purpose. Some examples include the use of Openspace that monitors gatelines and people flow at St Pancras and technology that profiles cubicle usage, soap and paper monitoring. HS1 is happy to discuss with ORR what more can be done in this space if takes on stations regulation.
19	Approach to monitoring	The bullet list of items on monitoring PR19 incentives refers to the calculation of efficiencies. The ORR has not clearly defined what this means and it could be open to different interpretations. This should align to the reporting on efficiencies outlined in the 'Financial Performance and Efficiencies' section later in this document and there should be a cross reference to this.
20	Approach to monitoring	With reference to <i>"the delivery of efficiencies set out in its 5YAMS"</i> '5YAMS' should be replaced with 'Life Cycle Reports' to align with the language in the Lease (the term 5YAMS is not used in the Station Contracts).
21	Monitoring and Assessment – Financial Performance and efficiency	This list of bullets are high-level and not well defined as they relate to stations and therefore open to wide interpretation. HS1 has had some discussions with the ORR about this and we are expecting to take a similar approach to reporting on these elements as we do for route outperformance and efficiencies. If the ORR is expecting an alternative approach or additional information, the ORR needs to clarify this in the document after engaging with HS1 to discuss how best to reflect efficiencies in the context of stations. The ORR should clarify its position to HS1 before finalising this document.
22	Financial Performance and efficiency	With reference to the sentence <i>"and the resultant payments due to funders under the Stations Leases"</i>

#	Topic	Comment
		This is sentence is misleading as paragraph 7 of Schedule 10 does not anticipate payments to the funders out of the Life Cycle Works Savings. Those payments HS1 proposes, and ORR approves, will be shared with funders. This line should be changed to <i>“and <u>if any</u> resultant payments are <u>made</u> to funders under the Stations Leases”</i> .

Office of Rail and Road  
25 Cabot Square  
London  
E14 4QZ

Network Rail (High Speed) Ltd.  
Singlewell Infrastructure  
Maintenance  
Henhurst Road  
Cobham  
Gravesend  
Kent  
DA12 3AN

Sent by email only:  
[PR19@orr.gov.uk](mailto:PR19@orr.gov.uk)

22<sup>nd</sup> April 2022

Dear Sir / Madam,

**Consultation on the second Regulatory Statement in respect of the HS1 network, and consultation on the holding HS1 Ltd to account in CP3 – interim policy for stations funding**

1. Network Rail (High Speed) Ltd (**NR (HS)**) appreciates the opportunity to respond to the Office of Rail and Road (**ORR**) consultation on the second Regulatory Statement in respect of the HS1 network, and consultation on the holding HS1 Ltd to account in CP3 – interim policy for stations funding. NR (HS) has set out a collective response to these consultation documents published on 11<sup>th</sup> April 2022.
2. It is important to set out the contractual arrangements between NR (HS) and HS1 Ltd, as the agreements differ between route and stations.
  - a. Route: NR (HS) operates, maintains, and renews the HS1 network on behalf of HS1 Ltd. NR (HS) is obligated to submit a 5 Year Asset Management Statement (5YAMS) to HS1 Ltd for the following control period in accordance with the Periodic Review process for Route as set out by the ORR. The NR (HS) 5YAMS is a significant element of the HS1 Ltd 5YAMS that is then submitted to the ORR and is subject to approval or determination.
  - b. Stations: NR (HS) manages three of the four Stations on the HS1 network on behalf of HS1 Ltd: St Pancras International, Stratford International, and Ebbsfleet International. The contractual arrangement between HS1 Ltd and NR (HS) requires HS1 Ltd to develop and submit a 5YAMS to the DfT for the Long-Term Charge for each station; this obligation is not delegated to NR (HS).
3. Within the existing contractual arrangements, NR (HS) is bound by the ORR's approval or determination of the Route 5YAMS, and therefore NR (HS) holds the regulatory risk for Route. This is not the same for Stations, whereby any risk associated with an approval or determination of the HS1 Ltd 5YAMS by the DfT under the current Periodic Review process for Stations sits with HS1 Ltd.
4. It should be noted that NR (HS) is working with HS1 Ltd to take on further responsibility for Asset Management at Stations during CP3 to support the roadmap towards NR (HS)

achieving ISO 55001 certification, already achieved by NR (HS) on Route, in preparation for PR24.

5. Subject to amending the existing Stations contract to implement any changes associated with point 4 above, NR (HS) are intending to produce a Stations 5YAMS for HS1 Ltd as an input to their 5YAMS for the PR24 process, in keeping with the Route PR24 process.
6. To support the transfer of regulation from the DfT to the ORR, NR (HS) would request that roles and responsibilities between all parties are clearly defined so there is clarity for stakeholders. NR (HS) would expect to be involved in that process alongside HS1 Ltd, so it can support the development of deliverables with HS1 Ltd for next Periodic Review process.
7. Specifically with regards to the ' *Holding HS1 Ltd to account in CP3 – interim policy for stations funding* ' consultation document, NR (HS) has not made any provision in CP3 for resource associated with delivering the monitoring and reporting requirements set out by the ORR. NR (HS) will liaise with HS1 Ltd to understand if there is immediate support required by NR (HS) with this activity and any costs associated with this, as it takes on further Asset Management responsibilities at Stations during CP3 and in preparation for PR24.

If you would like to discuss further any matters raised in this letter, then please do not hesitate to contact me.

Yours faithfully,



**Chirag Desai**

Business Planning & Regulation Manager  
Network Rail (High Speed) Ltd

- cc. **Chantelle Casula**, Director of Strategy & Commercial, Network Rail (High Speed) Ltd.  
cc. **James Mackay**, Head of Regulations & Customer Relationships, HS1 Ltd.  
cc. **Kathryn Hardy**, Senior Regulatory Manager, HS1 Ltd.



Joseph Mullally  
Senior Contract Manager  
HS1,  
DfT.

## Ref- Regulation of Highspeed Stations - DfT

20<sup>th</sup> April 2022

### **SE Trains Limited response to the DfT consultation of the transferring of regulation of the four Highspeed stations on the HS1 network to the ORR.**

To whom it may concern.

Thank you for allowing Southeastern the opportunity to comment on the consultation received from the DfT on the 28<sup>th</sup> of March and the ORR on the 11<sup>th</sup> April 2022 with regards to the consideration of transferring responsibility for the regulation of the four Highspeed stations on the HS1 network to the ORR.

Southeastern has taken each question outlined in the consultation below:

**1. Please set out your views on the risks and benefits of the proposed transfer of regulation of the HS1 Stations to the ORR giving reasons for your responses.**

We understand that any transfer would mean that the ORR will be responsible for carrying out the five yearly Periodic Review process and associated monitoring for Stations. This is already carried out by the ORR for the Route and would align HS1 with the rest of the Route and industry. We see this as a positive transition, which would ensure any contractual changes required to Stations would be tightly monitored and regulated. All documents, we would assume would then be published by the ORR on their public site for viewing as per the rest of the industry.

We would expect there to be some amendments required to the Station Access Agreements to reflect any changes to the Concession Agreement.

We see that this change will allow the ORR to enforce regulatory decisions and HS1 obligations which would be welcomed and should also generate efficiencies for both HS1 and the operators for a more cohesive and alliancing framework.

It's understood that the ORR would not be responsible for regulating the Qualifying Expenditure (QX) element of HS1 charges.

**2. Would you expect the proposed transfer to positively or negatively impact your business and your use of the HS1 stations, if so, how?**



We believe that the proposed transfer would positively impact our business as outlined in point 1.

**3. How would these proposals impact on the effectiveness of regulation of the HS1 stations and network, please provide reasons for your response?**

As noted in point 1, this change should generate efficiencies for both HS1 and the operators and bring in line HS1 with the rest of the industry who are already regulated by the ORR for Stations (including Managed and Franchised) and Route.

There would be an expectation that with both Stations and Route sitting with the ORR, there would be a more streamlined approach to contractual changes and better synchronicity between the ORR, DfT and operators.

**4. DfT is proposing to fund the ORR's costs for the Periodic Review 2024 (PR24) and the monitoring until the end of CP3. What are your views on this, please provide reasons for your response?**

It is our assumption that this has no impact on TOCs as DfT will directly fund the transfer of work from DfT to ORR.

**5. The Department seeks your views on funding the ORR's costs of regulation beyond PR24. What would you consider to be the right approach? Please provide reasons for your answer.**

As an operator, we currently contribute to the costs of regulation of the HS1 route, as part of the ORMC charge we pay to HS1 "ORR Regulatory & Safety costs" for the HS1 Route in the region of £600k between beneficiaries. We would expect not to see an increase in the cost of regulation as a result of this proposal of transfer of responsibilities from the DfT to the ORR beyond PR24.

As an industry, we are committed to delivery and cost efficiencies within rail and believe that this proposal would be beneficial to our business for continuity, regulatory control and more efficient alliancing for future growth, but this should not be to the detriment of cost increases to the TOC.

Yours sincerely,



Lucinda Ball  
Stations & Depot Access Contracts  
SE Trains Limited  
4More London  
[redacted]  
[redacted]



Let's talk